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MISCELLANY.

AGENCY — RATIFICATION — NECESSITY THAT THE PERSON ACTING SHOULD HAVE PROFESSED TO ACT AS AGENT.—A somewhat curious conflict concerning an interesting question of ratification is presented in two very recent cases decided by the English House of Lords and the Supreme Court of Massachusetts, respectively. In the Massachusetts case—*Hayward* v. *Langmaid* (1902) Mass. 63 N. E. Rep. 912—the question was whether it is "necessary to a ratification that the act should have been done by one who represented or held himself out as an agent in respect to the matter to which it related," and it was held that such is not the law. "It is necessary," said the court, "in order to a ratification, that the act should have been done by one who was in fact acting as an agent, but it is not necessary that he should have been understood to be such by the party with whom he was dealing." The court cited to this proposition, *Sartwell* v. *Frost*, 122 Mass. 184; *Ford* v. *Linehan*, 146 Mass. 283, 15 N. E. 591; *New England Dredging Co.* v. *Rockport Granite Co.*, 149 Mass. 381, 21 N. E. 947; *Schendel* v. *Stevenson*, 153 Mass. 351, 26 N. E. 689. No one of these cases, however, involved this question, and they would be just as pertinent if cited to support the contrary view.

In the English case—*Keighley* v. *Durant* (1901) Ap. Cas. 240, it was held, overruling *Durant* v. *Roberts* (1900) 1 Q. B. 629—that, in the language of the syllabus, "a contract made by a person intending to contract on behalf of a third party, but without his authority, cannot be ratified by the third party so as to render him able to sue or liable to be sued on the contract, where the person who made the contract did not profess at the time of making it to be acting on behalf of a principal." This was the only question considered in the case; the Lords were unanimous, and the subject was elaborately discussed.

Neither *Durant* v. *Roberts*, nor *Keighley* v. *Durant* was cited by the court in Massachusetts, and the weight of authority is certainly against the Massachusetts view. See *Mitchell* v. *Fire Assn.*, 48 Minn. 278, 51 N. W. Rep. 608; *Ferris* v. *Snow* (1902) Mich. 90 N. W. Rep. 850; 1 Mich. Law Review, 140.—*Michigan Law Review.*

ADMIRALTY JURISDICTION OVER TORTS.—A late decision in Hawaii fixes a new restriction upon the field of maritime tort. *Campbell* v. *H. Hackfeld & Co., Ltd.* (U. S. Dist. Ct. Hawaii, Oct. 21, 1902). The defendant corporation had contracted to unload a vessel lying within the navigable waters of the United States, and employed the plaintiff as a laborer in the undertaking. While working in the ship's hold, the plaintiff was injured by the defendant's negligence. The court held that, as the relation between the parties was not of a maritime nature, admiralty had no jurisdiction.

It has hitherto been considered settled law that admiralty jurisdiction over torts depends solely on the place where the tort is committed. See *The Plymouth*, 3 Wall. (U. S. Sup. Ct.) 20; *The Strabo*, 90 Fed. Rep. 110.

In every instance which has been found, however, a maritime relation such as is required by the court in the principal case has in fact existed. The question of its necessity has, consequently, never before been actually decided. The novelty in the view of the court is that jurisdiction in torts, as in contracts, should extend only to cases in which the parties are brought into relation with each other by reason of the fact that at least one of them is directly engaged in maritime affairs, representing a ship or her owners. It should be noted that the court proposes this test not as a substitute for the recognized one as to locality, but merely as a qualification upon it.

The chief arguments which suggest themselves in favor of the new doctrine are that it seems reasonable to restrict admiralty jurisdiction to matters which are in themselves of a maritime nature; that the new view is the result of a finer analysis of the nature of admiralty juridiction than has heretofore been made; and that, as indicated above, its adoption does not involve the actual overruling of previous decisions.

In considering these arguments, some investigation into the history of admiralty jurisdiction seems necessary. At the time of the Black Book, admiralty jurisdiction over both torts and contracts seems to have depended primarily on the place where the tort was committed or the contract made. See *De Lovio* v. *Boit*, 2 Gall. (U. S. Circ. Ct.) 398, 403 ff. In torts, this remained an undisputed test, and even in contracts efforts were made for a long time to restrict the jurisdiction by the same standard. *Bene* v. *Wilcocks*, Dyer, 159, n. 38. It was, however, finally recognized that the jurisdiction over contracts was, to some extent at least, independent of locality. *Anon.*, Winch 8. Cf. Benedict, Adm. Prac., 3d ed., sec. 48. And that branch of the law by a gradual working away from the early locality test reached its present position, that jurisdiction depends upon whether the transaction itself is of maritime nature. *Insurance Co.* v. *Dunham*, 11 Wall. (U. S. Sup. Ct.) 1. The reason for this departure was, perhaps, the practical one that the locality test often gave undesirable results. Thus a court of admiralty should obviously have jurisdiction over charter-parties, even though made on land, whereas it is clearly impracticable for it to assume jurisdiction over a mortgage of realty merely because made at sea. Hence the original test of locality, being inappropriate to contracts, was discarded; but in torts, where its practical results were satisfactory, it was retained.

It is believed, therefore, that the doctrine of the principal case in qualifying the locality test as applied to torts, infringes a rule which originated in the very nature of admiralty jurisdiction, and which has been satisfactory in its practical operation. This test has been all but universally regarded as the sole one. See *The Plymouth*, *supra*. The single authority to the contrary is the somewhat obscurely stated *dictum* of a text-writer. Benedict, *supra*, sec. 308. The principal case seems, then, at variance with the spirit of the previous cases, even though reconcilable with the points actually decided. Not only would the adoption of its doctrine unsettle a rule which has long been assumed to be law, but it would make the question of jurisdiction over torts subject to the difficulty which so often perplexes cases of contract, namely, the necessity of deciding in each case what is a maritime relation. The decision in the principal case seems therefore unfor-

tunate as increasing complication and uncertainity in the law without, apparently, securing any practical gain to compensate for the disadvantages. —*Harvard Law Review.*

INJURIES RECEIVED WHILE OFF DUTY BY REASON OF THE NEGLIGENCE OF A FELLOW-SERVANT.—The theory on which the rule is based which exempts a master from liability when one of his servants is injured by the negligence of a fellow-servant, is, as stated by Erle, C. J., in *Tunney* v. *Midland R. Co.* (1866) L. R. 1 C. P. at 296: "A servant, when he engages to serve a master, undertakes, as between himself and his master, to run all the ordinary risks of the service, including the risk of negligence upon the part of a fellow-servant, when he is acting in the discharge of his duty as servant of him who is the common master of both." This theory was first advanced by Shaw, J., in *Farwell* v. *B. & W. Ry. Corp.* (1842) 4 Met. 49, and it has been generally adopted both in England and in this country, in preference to that of *Priestly* v. *Fowler* (1837) 3 M. & W. 1, "that a servant has better opportunities than his master for watching and controlling the conduct of his fellow-servants, and that a contrary doctrine would lead to intolerable inconvenience, and encourage servants to be negligent." Pollock on Torts, p. 84. To apply this rule there must be an accurate definition of "fellow-servant," and perhaps it is nowhere harder to define than when the servant, though in the general employ of his master, is, for the time being, off-duty.

The cases under this head naturally fall into groups. It is, in the first place, well settled that where a servant's day's work is done, and there is no relation remaining between him and his master, he is not then an employee in such a sense as to make the fellow-servant rule apply. *Fletcher* v. *Baltimore and Potomac Ry Co.* (1897) 168 U. S. 135. But, on the other hand, though apparently off-duty, if there is any obligation on his part to respond to the master's call in an emergency, he is deemed to be an employee and to come under the rule. In *Russell* v. *Hudson R. R. Co* (1858) 17 N. Y. 134, the court found that the plaintiff, though his day's work was done, and he was being carried home on the defendant's train, was yet expected, if needed, to assist in managing the train by applying the brakes, and therefore as he owed an obligation to be ready, he was considered as on duty. In *St. L., A. & T. Ry. Co.* v. *Welch* (1888) 72 Tex. 298, on the same theory, one whose day's work was done, and who was sleeping in a car on a side-track, but liable to be called at any moment, was held to be on duty. These two classes of cases represent the views on opposite sides of the line, and it is with the cases that fall between that difficulty is found The first class of these are the so-called "conveyance" cases, where the servant is being carried to and from his work in the master's conveyance. Such carriage, is, in some cases, part of his remuneration, and in others a mere understanding incident to his contract. There has been much difference of opinion as to the relationship under such circumstances, but the general rule, if there be any, might be expressed as follows: "The employment begins when the servant enters the conveyance in the control of his master for the purpose of reaching the particular place where he is to work. The length of time before or after the hour for beginning work is not a guide.

Thus, where a master by special arrangement with his employees, or by a method of conducting his business, which he has adopted, undertakes to transport his servants to or from their place of work, the employment begins and continues through that time." Dresser, Employers Liability, sec. 13, p. 75; *Tunney* v. *Midland Ry. Co. supra; Vick* v. *N. Y. C. & H. R. R. Co.* (1884) 95 N. Y. 267; *Gilshannon* v. *Stony Brook R. R. Corp.* (1852) 64 Mass. 228. Pennsylvania is the only State that decides directly the other way. *McNulty* v. *Penna. R. R. Co.* (1897) 182 Pa. St. 479. This rule, however, only includes those cases where the employee has entered the train for the purpose of going to or coming from his place of work. For, if he is traveling on his own business, though exercising his right of free carriage as an incident to his contract, he is not deemed an employee. As stated in *Doyle* v. *Fitchburg R. R. Co* (1894) 162 Mass. 66, "a person may at one time be an employee when passing over a railroad, and at another time, in passing over the same road, be a passenger, though continuing all the while, in a popular sense, in the employment of the railroad company." The test is whether he is on his own or his master's business. This view was followed in *Dickinson* v. *West End Street Ry. Co.* (1901) 177 Mass. 365, and appears to be well recognized in other jurisdictions. *State* v. *Western Maryland Ry. Co.* (1884) 63 Md. 433.

We now come to the last class of cases to be considered, namely, where the plaintiff, though his day's work is done, is injured on his employer's premises. It appears to be settled that if he is on the premises on his own business as any stranger might be, as, for example, in crossing the tracks, or walking on them, he is not an employee. *Sullivan* v. *N. Y., N., H. & H. R. Co.* (1900) 73 Conn. 203. But it seems that if, in going to or from his work, it is necessary for him to pass over the premises owned or controlled by his master, he continues in the employment during that time. *Olsen* v. *Andrews* (1897) 168 Mass. 261; *Ewald* v. *Chicago & N. W. Ry. Co.* (1888) 70 Wis. 420.

This question is clearly presented by a recent case in the United States Circuit Court of Appeals. A servant assisting in the making of an excavation was sleeping in a tent near the work, when a piece of rock thrown by a blast, fell through the tent, injuring him. It appeared that the plaintiff was boarded and lodged in the tent by the master, such board and lodging being received in part compensation for his services. At the time of the accident, the night shift to which he belonged was not at work. It was held that the fellow-servant doctrine had no application, inasmuch as at the time of the accident the plaintiff was not a fellow-servant of those to whom the master had delegated the duty of warning the plaintiff of blasts. *Orman* v. *Salvo* (C. C. A. 8th Circ. 1902) 117 Fed. 233.

An application of the rule stated in the beginning of the discussion, leads to a different conclusion from that reached by the court. For to say that a servant assumes all the risks incident to his contract, must in this case, include the use of the tent, which was part of the plaintiff's compensation. Nor can we apply the reasoning of the cases above cited, for, with one or two exceptions, there is an endeavor to find just how much the plaintiff assumed the risk. Where the accident happens while a right incident to

the contract is being exercised, there is usually no recovery. The case illustrates the tendency of the courts to mitigate the harshness of the fellow-servant rule wherever possible. Various limitations have been placed on it in other classes of cases. Jurisdictions vary, but in the decisions we find limitations such as the application of the "vice-principal" theory, where the negligent servant is deemed to be doing a duty for his master, which the latter is not allowed to delegate, and where, consequently, the question of fellow-servants does not arise, *N. P. Ry. Co.* v. *Herbert* (1885) 116 U. S. 642; or, again, the "different department" theory, where the injured servant, not being in the same general class as the negligent one, is not deemed to be a fellow-servant, *Ryan* v. *Chicago etc. R. Co.* (1871) 60 Ill. 171; or where the master has chosen incompetent servants, *Evansville etc. Ry. Co.* v. *Guyton* (1888) 115 Ind. 450; or where the negligent act is done by a superior servant, *Little Miami Ry. Co.* v. *Stevens* (1851) 20 Ohio 416. It is also interesting to note that many States have passed statutes, limiting the fellow-servant rule similar to the "Employer's Liability Act," first passed in England in 1880.—*Columbia Law Review.*

JUDGE TEBBS' CHARGE TO THE GRAND JURY IN THE CRAVEN LYNCHING CASE.—We publish below the charge delivered to the grand jury by Judge Richard H. Tebbs, of the County Court of Loudoun county, Virginia, at the August term of that court, 1902, in connection with the famous Craven lynching case, which occurred in Loudoun county,in July, 1902.

This paper has already received wide circulation through the lay press, but it well deserves further publicity and permanent preservation in our pages.

The prompt and courageous action of Judge Tebbs and the other officials of his court in dealing with this case is in striking contrast with that generally taken by county officials in similar cases, and it is to be hoped that the example thus set may produce a wholesome result. Certainly our people need education along this line. Appeals to sober judgment come too late after the mob has gathered. The only remedy is a campaign of education in advance of the mob's assembling.

Gentlemen of the Grand Jury:

In accordance with the immemorial usage of our forefathers, not to her officials, but to her citizens, Virginia entrusts the due administration of her criminal laws.

No man can be called to answer for high crime against the commonwealth except upon presentment of indictment by a grand jury.

It is my duty, as judge of this court, to select for this service men good and true, and I cannot offer to Virginia the service of better men than I see before me. It is my duty to remind you of the law, but the honor and fair fame of Loudoun, the order and well being of the community, the peace and dignity of the commonwealth are entrusted to your hands.

In the emergency that confronts us your duty may be an onerous one; no man would seek it, yet no honest man can shirk it.

These duties are succinctly set forth in the oath of your foreman, which

you and each of you have sworn to observe and keep on your part. "You shall diligently inquire and true presentment make of all such matters as may be given you in charge, or come to your knowledge, touching the present service. You shall present no person through prejudice or ill will nor leave any unpresented through fear or favor, but in all your presentments you shall present 'the truth, the whole truth, and nothing but the truth,' So help you God."

In making presentment or finding indictment, at least seven of your number must concur. You can act upon the testimony of witnesses or the knowledge of two of your number.

While you are not restricted to "such matter as may be given you in charge" and the services of this court are yours in any inquiry you may see fit to undertake, it is my painful duty to charge you in regard to a recent occurrence, a crime of unexampled magnitude, at least in this community, and of far-reaching consequence, a reproach to our people and a foul blot on the hitherto unstained escutcheon of Loudoun.

You are to inquire into the death which only a few days since Charles Craven met at the hands of a mob.

In the beginning, it is well to remind you of certain principles of law that apply in a case like this. Murder is the unlawful killing of any human being within the protection of the commonwealth, with malice express or implied, and where this or other crime is participated in by a number of persons acting together, any person present at any portion of the time, participating in the common purpose, assisting or urging on others, or ready and prepared to assist by word or deed in carrying out that purpose, is guilty in the eye of the law, though he or they may not have themselves done the act that accomplished or completed the crime.

Why is this killing of Craven so important, do you ask? Was he such an important citizen, or can his loss be so hardly borne? No—in his death the State sustains no loss. Barn-burner, highway robber, murderer, most likely his crime-stained soul has passed to answer before his maker for deeds done in the flesh, and none, not even his old mother, bewails his fate.

Was it simply that he was murdered? No. Other murders are daily happening in this broad land, yet they do not shock us like this one.

As citizens, we view crimes only as they affect the commonwealth. So far as the merely moral aspect is concerned, we may well leave all sinners against God to the righteous judgment of Him who doeth all things well.

Was it that he was lynched? Only partly so. Lynchings are not unknown in Loudoun. Throughout this Southern land, oft-times when the greatest of all crimes is committed upon women, men, true men, ordinarily sober, law-abiding, God-fearing men, not to glut their vengeance, nor yet to execute justice (for in all this, the law is sufficient), but to prevent the crying shame, I had almost said the legal crime, of forcing some shrinking girl or honored matron to undergo an ordeal, almost worse than death, in repeating before some gaping crowd the revolting details of this horrid crime, have made way with the offender, and their act, if not justified, has at least been condoned. No sane man has ever expected that they be punished.

No such case confronts us to-day.

There are circumstances that distinguish this from other crimes and have caused the eyes of all mankind to be turned upon us in sad astonishment.

It was a most useless act. Not the slightest excuse can be offered for its commission. It is true that there are even now at large murderers that have escaped capture, hence every reason for the praiseworthy zeal shown in the determined efforts to apprehend this man; but once captured, no man can say that justice has failed in this community, and a just retribution for this man's sins, so far as men can inflict punishment, was certain, and no lawless act could increase it.

Countries are held to be civilized and enlightened, savage and barbarous. By nought are they so much distinguished as by the character of their laws and the due respect and obedience paid them. We live under laws and a government, the heritage of our forefathers, enjoying under these their laws, for which they fought and bled and died, the noble heritage of protection of life, liberty and the pursuit of happiness. These laws are good and in them is our safety.

Yet without reason or excuse, merely to glut their mad passion for lawless vengeance, and in the defiance of the laws of God and man, in open daylight, with a reckless disregard for the rights, nay the very lives, of others, with the declared purpose, if necessary to the accomplishment of their fell design, to take the lives of our best citizens, careless of the honor and fair fame of this their native land, this lawless mob overpowered the officers of justice, broke into and injured our jail, imbrued their hands in human blood and brought down shame and disgrace upon us.

And, gentlemen, this is not all nor the worst of th sad story. Saddest of all is to consider the character of the men who did this deed. This mob was composed only, I am told, in a small degree of the base and degraded among us. It consisted largely of men from whom we had the right to expect better things, men of standing and education in the community, men whom we should expect to find upholding and maintaining, ready to fight for, even to die for, the laws and government so dear to their ancestors; and these men were the leaders in heedless violence, in rank lawlessness. Better, far better, could we afford to lose by death the best and most valued citizens among us. If such things are to be upheld by the good people of this land, then God save old Loudoun! God save Virginia!

Gentlemen, not in anger or indignation, but oppressed with sorrow and with a full sense of the responsibility resting upon me have I spoken. I have endeavored faithfully to discharge my sworn duty under the laws. Most sincerely do I trust that many of these men have already seen or will yet see the error of their ways, and in the future will be true defenders of that government they have wronged, those laws they have violated.

Gentlemen, though sick almost to the point of prostration, the coroner has faithfully discharged his duties. His jury have done their part. The attorney for the commonwealth and the other officials of this court are performing theirs, and I now submit this whole matter to you, with implicit confidence that you will perform yours, and, as best you may, so act as to vindicate the honor of Loudoun and the majesty of the law, re-

establish peace and safety among us, and see that never again does deed so shameful darken the page of our history.

QUESTIONS PROPOUNDED BY THE COURT OF APPEALS ON THE BAR EXAMINATION AT RICHMOND, JANUARY, 1903.

1. What is law in its most comprehensive sense? What is the common law and its sources? And the difference between an *ex post facto* and a retrospective law?

2. How are wrongs divided? How are rights divided; and to what are absolute rights of individuals reducible; and in what do rights of a personal security consist?

3. What is an estate of freehold? Name the estates less than freehold. What is an estate of inheritance; into what classes divided; and what are the instruments and methods for the conveyance of or acquisition of real estate?

4. What courts exercise jurisdiction in this State? Give generally the jurisdiction of each, and state what power interferes more directly and uniformly, than any other branch of the government with all the concerns and interests of the everyday social life of the citizen?

5. Define curtesy and dower respectively; give the requisites of each; and specify all the differences between the two estates?

6. A married woman, having an equitable separate estate in fee in a tract of land, with power to dispose of it by will, devised it to her children, and died leaving her husband surviving her; is he entitled to an estate by the curtesy in the land? What would be the husband's rights with respect to curtesy if it was the wife's legal separate estate that she had conveyed away by her separate deed in her life time?

7. What change in the common law, if any, is made by our statute with reference to jointure? What jointure will be an absolute bar to dower? If it failed to be a legal bar, though intended to be in lieu of dower, what are the widow's rights?

8. What are several kinds of guardians in Virginia? What powers has the guardian in respect to realty and personalty respectively? When does the wardship terminate? At what age are infants supposed to be capable of committing crime in Virgina? At what age may they make will of realty and personalty respectively? Who inherits the lands of an infant derived from one of his parents; and who, if derived from some other person?

9. What are the essential elements of a contract? What is a good and what a valuable consideration? If a contract is in writing, how far, if at all, is parol evidence admissible to explain the intention of the parties, or to contradict or vary the terms of such contracts?

10. How are contracts between a surviving partner and the representatives of his deceased partner, with respect to the partnership estate regarded? How where the transaction involves a purchase by the surviving partner of the interest of his deceased partner?

11. What is negotiable paper under our statute? Who is the principal debtor in an accepted bill of exchange, the drawer or acceptor?

12. What is the effect of a transaction, where one who is primarily bound for the payment of a note, takes it up? What if the note be taken up by a stranger who is neither a party to the paper nor in any way bound for its payment? What title does the purchaser of past due negotiable paper from an agent to collect, acquire?

13. When has a vendor of land a lien for the unpaid purchase money? Where must entry of satisfaction of a vendor's lien be made; how signed and attested, and the effect thereof? What is the limitation upon the right to enforce a vendor's lien?

14. A mortgages land to B for $1,000, and afterwards mortgages the same tract to C for $2,000, and subsequently gives a third mortgage on the same land to D for $1,500. None of these deeds are recorded. The property is insufficient to satisfy said liens in full. What will be the order of priority?

15. A conveys a tract of land to B, takes a deed of trust to secure the purchase money, which is evidenced by two negotiable notes at six and twelve months; both deeds are recorded. A transfers the purchase money notes to C for a valuable consideration, and afterwards and before the notes are due or paid, A marks the deed of trusts satisfied as provided by statute. B after the deed of trust has been marked satisfied, conveys the land to D, a *bona fide* purchaser, without notice. Whose rights are superior, C, the holder of negotiable notes, or D, the vendee of the land, and why?

16. When a party owns real and personal property in different states, what law will govern as to the formalities required in the execution of his will by which he disposes of the same? For what purpose and to what extent may parol evidence be received in construing a will? And in what case does the doctrine of survivorship exist?

17. How is an agency created; how for the conveyance of lands; how and when are powers in an agent implied from necessity; how far is the principal bound by the acts of his agent after revocation, but before notice thereof?

18. What constitutes a sale of personal property? Suppose the title to personal property sold proves defective, and there was no express warranty of the title, has the vendee any remedy?

19. What is a corporation? How are private corporations created in this State? How dissolved?

20. Is a stockholder in a Virginia corporation ever liable, in any case, to pay more than the full face value of the stock subscribed; if so, in what cases and under what circumstances?

21. A takes twenty shares of stock in a corporation in 1860, paying a small amount theron in cash. No calls are afterwards made until 1895, when the corporation is insolvent, and in the hands of a receiver, and the court makes an assessment of twenty-five per cent. on all unpaid subscriptions. A pleads the statute of limitations. Does this plea defeat the claim against A?

22. What is the degree of duty which a master or employer owes to his servants in employing fellow-servants, and in furnishing appliances with, and places in, which to work?

23. In order to sustain an action for malicious prosecution what must be alleged and proved? What spoken words are slanderous *per se?*

24. What is the general rule as to the admissibility of hearsay evidence. Give four exceptions to the general rule. What is the general rule for determining the admissibility of evidence in any case?

25. Give the doctrine in England and also in Virginia as to trusts declared for vague and indefinite objects generally, and for vague and indefinite charities.

26. State the doctrine in Virginia as to the validity of a common law marriage in view of the statutory directions as to how marriages shall be celebrated.

27. What is equity as understood in England and the United States, and the difference between courts of equity and common law courts?

28. What are the usual pleadings in a court of equity? What is an original bill; an amended bill; and the office of each.

29. Give five heads of equity jurisdiction; and give three maxims of equity and explain their meaning.

30. If the answer to a bill in chancery sets up new matter to which the complainant wishes to reply, how can it be done under our practice?

31. What is the object of pleading?

32. What pleas must be good in form as well as in substance?

33. How many pleas to a declaration can be pleaded at common law and how many under our statute? How many replications can be filed to each plea?

34. What is the office or a demurrer? What is a demurrer to evidence and its effect upon the party demurring?

35. A and B are opposing counsel in a trial before a jury, and A asks the witness a question which B thinks is illegal. What is necessary for B to do to have the question and answer excluded. Suppose he is not successful in having it excluded, and desires to take the case to an appellate court, how can he get it in the record?

36. Define crime. How are criminal offenses divided? What constitutes a felony and what a misdemeanor?

37. Define murder in the first and second degree. How is each punished? When is the killing of a person justifiable, and when excusable?

38. If a person die in another State from the effect of a wound received in this State, where must the offender be tried?

39. An accused is indicted and tried for murder, and found guilty of murder in the second degree. The verdict is set aside, and upon another trial the accused is found guilty of murder in the first degree, and sentenced accordingly. Is there any error in this judgment?

40. What is the *corpus delicti?* What are dying declarations and when admissible as evidence?

LIST OF SUCCESSFUL APPLICANTS ON THE FOREGOING EXAMINATION.

Booker, M. B., Houston (Richmond Coll.)
Davis, Beverly A., Richmond (Richmond Coll.)
Davis, B. H., Horeb (Richmond Coll.)
Dillard, D. W., Spencer (Wash and Lee Univ.)
Drewry, P. D., Charlottesville (Univ. Va.)
Fugate, Robert C., Charlottesville (Univ. Va.)
Garrow, J. T., Denhigh (Richmond Coll.)
Hairston, Samuel W., Martinsville (B. L. Wash. and Lee. Univ.)
Hilldrup, John W., Lynchburg.
Jones, William Catesby, Gloucester (Univ. Va. Summer Law School)
Lacy, Lane, Custom House, Richmond (Richmond Coll.)
Leigh, J. H. P., Petersburg (Richmond Coll.)
Miller, F. C., Norfolk.
Moore, C. R., Birds Nest (Richmond Coll.)
Nelson, Geo. Egghorn, Hot Springs.
Nottingham, Gardiner R., Eastville (Richmond Coll.)
Parrish, Winston, University of Virginia (Univ. Va.)
Perkins, W. Allan, Charlottesville (Univ. Va.)
Powell, Samuel Peter, Charlottesville (Univ. Va.)
Rogers, Hamilton, Petersburg.
Roper Albert Lonsdale, Charlottesville (Univ. Va.)
Ross, William E., Richmond.
Swift, Granville R., Washington, D. C.
Thomas, J. Lewis, University of Virginia (Univ. Va.)
Tucker, John R., Cambridge, Mass. (B. L. Wash. and Lee Univ.)
Tyler, W. G., Richmond (Richmond Coll.)
Waller, Samuel Gardner, Front Royal (Univ. Va.)
Weaver, Aubrey G., Front Royal (B. L. Univ. Va.)
Willis, Russel H., Richmond (Richmond Coll.)
Wright, James F., University of Virginia (Univ. Va.)

The large number of undergraduates in this list indicates that the bar examination is becoming less and less a bugbear, and that many young gentlemen are appplying for admission who have not completed their legal education. Students have found out that the court frequently repeats its questions, and the idea very generally obtains among them that to "cram up" on former questions will insure an easy passage of the ordeal. These crammers found the foregoing examination much to their taste—practically all of the questions having appeared in former examinations. We should be glad to see more variety, and especially a more searching examination of the applicant's knowledge of pleading and practice.